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THE HOUSE COMMITTEE ON ARMED SERVICES

STATEMENT OF

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OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE
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Madam Chairwoman, Ranking Member Speier, distinguished members of the subcommittee and committee, and former colleagues on your dedicated staff, thank you for the opportunity to testify today on past and prospective transfers from the detention center at Guantanamo Bay, Cuba.

I am pleased to be joined by my colleague at the Department of State, Charlie Trumbull, the Acting Special Envoy for Guantanamo Detention Closure and by Patrick Prior, of the Defense Intelligence Agency.

I understand the members of the subcommittee are participating in an oversight visit to the detention facility later this month and I hope to join you on that visit. When you visit Guantanamo Bay you will see dedicated and professional servicemembers who perform superbly under difficult and challenging conditions.

Overview

On January 22, 2009, President Obama signed Executive Order 13492, which ordered the closure of the detention facilities at the Guantanamo Bay Naval Base in Cuba. Pursuant to that order, a special task force (the “EOTF task force”) was established to comprehensively review information in the possession of the U.S. government about the detainees, and to assess appropriate disposition options. Through that rigorous interagency effort, the review participants decided on a disposition--transfer, prosecution, or continued detention--for all 240 detainees subject to the review.

Since then, pursuant to Executive Order 13567, signed on March 7, 2011, and consistent with section 1023 of the NDAA for FY 2012, a Periodic Review Board (PRB) has begun to review the status of those detainees not currently eligible for transfer, and

against whom there are no charges pending and no judgment of conviction has been entered.

There are **122** detainees remaining at the Guantanamo detention facility. Of these, **54** are eligible for transfer, **10** are being prosecuted or have been sentenced, and **58** are in the process of being reviewed by the PRB.

Secretary of Defense Hagel has approved the transfer of **44** detainees--**11** of whom were transferred in 2013, **28** of whom were transferred last year, and **5** of whom have been transferred this year. The great majority of these transfers occurred in accordance with the authorities in section 1035 of the FY14 NDAA. I urge you to maintain these authorities and refrain from placing any additional statutory restrictions on our ability to transfer GTMO detainees in accordance with our national security priorities.

Closure Is a National Security Imperative

Madam Chairman and members of the subcommittee, at the outset I want to make one fundamental point regarding the detention facility at Guantanamo Bay. The President has determined that closing this detention facility is a national security imperative. The President and his national security team all believe that the continued operation of the detention facility at Guantanamo weakens our national security by draining resources, damaging our relationships with key allies, and emboldening violent extremists. It is no coincidence that ISIL videos displaying barbaric and savage executions of American hostages and more recently of a Jordanian pilot and a Japanese hostage, each showed the victim clothed in an orange jumpsuit, believed by many to be

the symbol of the United States Government's operation of the Guantanamo detention facility. ISIL exploits Guantanamo to enhance its propaganda.

42 retired military leaders, all retired general officers or flag officers, wrote the chairman and ranking member of the Senate Armed Services Committee on January 29, 2015 and stated, "[I]t is hard to overstate how damaging the continued existence of the detention facility at Guantanamo has been and continues to be. It is a critical national security issue." The letter continued, "[M]any of us have been told on repeated occasions by our friends in countries around the world that **the greatest single action the United States can take to fight terrorism is to close Guantanamo.**"

This letter was signed by General Charles C. Krulak, a retired Commandant of the Marine Corps, Major General Michael R. Lehnert, the first commanding general of the joint detention task force at Guantanamo ("JTF-GTMO), General Joseph Hoar, the former head of CENTCOM, General David M. Maddox, the former head of the U.S. Army in Europe, and thirty-six other retired senior military leaders.

Many other senior military leaders acknowledge the need to close this detention facility. Admiral Michael Mullen and General Martin Dempsey, the former and current chairman of the Joint Chiefs of Staff, support Guantanamo closure. In 2010, General David Petraeus, then the commander of CENTCOM stated, "I've been on the record on that for well over a year as well, saying that it [Guantanamo] should be closed. . . . And I think that whenever we have, perhaps, taken expedient measures, they have turned around and bitten us in the backside. . . . Abu Ghraib and other situations like that are nonbiodegradables. They don't go away. The enemy continues to beat you with them like a stick."

Senior figures across the political spectrum have made clear that Guantanamo poses profound risks to our national security and should be closed. Former Secretaries of Defense Robert Gates and Leon Panetta, and the current Secretary of Defense, Chuck Hagel, all support Guantanamo closure.

President George W. Bush's chief counter-terrorism advisor, Kenneth Wainstein, also concluded maintaining the detention facility at Guantanamo was not sustainable.

Finally, President George W. Bush himself concluded that the Guantanamo detention facility was "a propaganda tool for our enemies and a distraction for our allies."

I will now address the specific issues addressed by the subcommittee's letter of invitation.

Recent Transfer Decisions

28 detainees were transferred in 2014. **5** have been transferred this year. These detainees were transferred to **11** different countries. These recent transfers included repatriations to Algeria, Kuwait, Saudi Arabia, and Afghanistan. The recent transfers also included resettlements to Qatar, Slovakia, Georgia, Uruguay, Kazakhstan, Estonia, and Oman. I look forward to discussing the details of each of these transfers and potential additional transfers, in the closed briefing.

Overall, 22 nations have taken detainees from GTMO who are not from that country. This broad support in the international community is also demonstrated by the numerous international organizations calling for closure, including the Organization for American States and recently, the Vatican. As with our military leaders, foreign leaders regularly cite the Guantanamo detention center as an obstacle to counterterrorism efforts. Cliff Sloan, my former colleague as the Department of State Special Envoy frequently

recalled strong language from our allies similar to the letter from the retired military leaders. Sloan stated as an example, “[A]s a high-ranking security official from one of our staunchest allies on counterterrorism (not from Europe) once told me, **‘The greatest single action the United States can take to fight terrorism is to close Guantánamo.’**”

Transfer Process

The current process that leads to a transfer decision builds upon the work of the review task force. It is careful and deliberative. Key features of the transfer process include a comprehensive interagency review and rigorous examination of updated information regarding the detainee, the security situation in the potential host country, and the willingness and capability of the potential host country to implement and maintain appropriate compliance with security measures. Those initial reviews are conducted by career professionals, including intelligence analysts, law enforcement agents, and attorneys, drawn from the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, and other agencies within the intelligence and national security community.

Next, any transfer decision requires an assessment by the Special Envoys for Guantanamo Detention Closure at both the Department of State and Defense of the security situation in the receiving country, and of the willingness and capability of the country to comply with security assurances requested by the United States. The Special Envoys negotiate specific security assurances addressing the unique circumstances of each detainee transfer.

Additionally, each decision to transfer has been approved by the unanimous agreement of six Principals – the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, the Attorney General, the Chairman of the Joint Chiefs, and finally, the Secretary of Defense.

Finally, the Secretary of Defense must determine if the proposed transfer meets the requirements set forth by Congress in the NDAA each year. Under Section 1035 of the fiscal 2014 NDAA, the Secretary may approve the transfer if he determines that the transfer is in the national security interests of the United States and that actions have been or are planned to be taken that will substantially mitigate the risk of the detainee engaging in terrorist or other hostile activity that threatens the United States or U.S. persons or interests. The factors considered in making this determination include:

- The security situation in the foreign country to which the detainee is to be transferred;
- Confirmed past activities by individuals transferred to the foreign country to which the detainee is to be transferred;
- Actions taken by the U.S. or the foreign country to reduce the risk the individual will engage in terrorist or hostile activity;
- Security assurances provided by the foreign government; and
- An assessment of the willingness and capabilities of the foreign government to meet those security assurances,

Security Assurances

I cannot discuss the specific security assurances we receive from foreign governments with any degree of specificity in open testimony. However, among the types of security measures put in place are travel restrictions, monitoring, information sharing, and reintegration/rehabilitation programs.

The decision to transfer is made only after detailed, specific conversations with the receiving country about the potential threat a detainee may pose after transfer and the agreement about the measures the receiving country will take in order to sufficiently mitigate that potential threat. As noted, we also review the capability of the receiving country and its security establishment, and its track record in adhering to prior agreements in this regard.

Monitoring of Completed Transfers

Once a detainee is transferred from Guantanamo, the intelligence community and others in the government continuously monitor for indications of reengagement and work closely with liaison partners to ensure the fullest understanding of a former detainee's activities. Through this follow-up process, the United States engages our partner nations closely and may request additional measures. Through a rigorous IC coordination process, including the Department of Defense and State, that draws on the assessments of several IC elements, ODNI determines whether to designate a former detainee as suspected of reengaging or confirmed to have reengaged.

Guarding Against Reengagement

A key focus of the review process described above is on mitigating the risk a detainee could "return to the fight" or otherwise reengage in acts that threaten the United States or U.S. persons. We take the possibility of reengagement very seriously. Secretary Hagel has testified forcefully before the full Committee on this.

The most recent public data on reengagement of former Guantanamo detainees was released in September 2014 and is current as of July 15, 2014. There is a lag in the

public reporting and I know you may have seen a more recent classified report on this matter. We can address updated classified statistics in a closed setting.

The ODNI categorizes the figures in three ways: 1) Total, 2) Pre-22 January 2009, which refers to former detainees who departed Guantanamo prior to January 22, 2009, and 3) Post-22 January 2009, which refers to former detainees who departed Guantanamo after January 22, 2009, as follows:

- **Total:** 17.3% confirmed of reengaging (107 of 620); 12.4% suspected of reengaging (77 of 620), for a total of 29.7% confirmed or suspected of reengagement.
- **Pre-22 January 2009:** 19% confirmed of reengaging (101 of 532); 14.3% suspected of reengaging (76 of 532), for a total of 33.3% confirmed or suspected of reengagement.
- **Post-22 January 2009:** 6.8% confirmed of reengaging (6 of 88); 1.1% suspected of reengaging (1 of 88) for a total of 7.9% confirmed or suspected of reengagement.

In other words, the rate of reengagement has been much lower for those transferred since 2009.

Of the detainees transferred under this Administration, over 90% are neither confirmed nor suspected of having reengaged. This statistic speaks to the result of the careful scrutiny given to each transfer in the intensive interagency review process, and the negotiation of agreements regarding security measures the receiving government intends to take pursuant to its own domestic laws and independent determinations that will mitigate the threat that the detainees will not pose a continuing threat to the United States and its allies after they have been transferred.

Even as the overwhelming majority of detainees this Administration has transferred are not suspected of reengaging, we nevertheless take any indications of

suspected or confirmed reengagement very seriously, and we work in close coordination with our partners to mitigate reengagement and to take follow-on action when necessary. This is demonstrated by an additional point about the reengagement data: of the **107** confirmed of reengaging (the vast majority of them transferred prior to 2009), **48** are either dead or in custody. Detainees transferred from Guantanamo by no means receive a free pass to reengage, their activities continue to be closely watched, and we are committed to using all lawful tools if necessary to mitigate the threat such detainees may pose if they do reengage.

Proposed Legislation

The recent legislation proposed by Representative Walorski and co-sponsored by Representative Austin Scott of the subcommittee would effectively ban most transfers from Guantanamo for two years. It reverts to the previous certification regime under the NDAA for FY 2012 and the NDAA for FY 2013, which resulted only in court-ordered transfers, transfers pursuant to pleas agreements and only a few transfers by the certification/national security waiver process. In addition, it adds a proposal to limit transfers based on JTF-GTMO threat assessments. These assessments are outdated and are limited products derived from a threat-analysis model that was never intended for the purposes for which this legislation now seeks to use it. Determinations of “threat level” made by JTF-GTMO were based on the battlefield or detention situation at the time. These assessments included linkages that may no longer be relevant, capabilities that may no longer exist, and reporting that has since been determined to be unreliable. Using these past and often incomplete determinations would not provide an accurate analysis. Moreover, reliance solely on an assessment of the threat posed by a detainee fails to

account for the terms of the transfer and the capabilities of the country to which the detainee would be sent, both of which can have a significant impact on the likelihood of a detainee reengaging in terrorist activities.

The determinations made by the 2009 Guantanamo Review Task Force process (the EOTF process cited above), an exhaustive interagency effort that fully examined the impact of transferring individuals from Guantanamo Bay, should be used as the foundational analysis when determining a detainee's current threat. This EOTF process took account of the JTF-GTMO assessments in the course of a more comprehensive review of U.S. intelligence and other information with respect to each detainee. The EOTF determinations, in conjunction with regularly updated information from the intelligence community, provide the most accurate assessment of a specific detainee's current threat level.

We believe that any decisions regarding transfers should be based on all current information and individual assessments of detainees.

Because this legislation, if enacted, would effectively block progress toward the goal of closing the Guantanamo Bay detention facility, the Administration opposes it.

Yemen

The proposed legislation bars transfer of any detainees to Yemen for two years. **75** Yemenis remain at Guantanamo Bay: **47** are eligible for transfer, **25** are eligible for PRB review, **2** have charges referred and **1** is serving pre-sentence confinement.

A ban on transfers to Yemen is unnecessary because we are not, at the present time, seeking to transfer any of them to Yemen, especially in light of the recent further deterioration in the security situation. Since the President's moratorium on detainee

transfers to Yemen was lifted nearly two years ago in favor of a case-by-case analysis, not a single detainee has been transferred to Yemen. The 12 Yemenis who have been transferred recently were transferred to five countries: Slovakia, Georgia, Kazakhstan, Estonia and Oman. We are currently negotiating with other countries to take additional Yemenis.

Plan to Close Guantanamo Detention Facility

Our plan has three main elements.

First, we will continue the process of responsibly transferring the 54 detainees eligible for transfer.

Second, we will continue the prosecution of detainees in the military commissions process, and if possible, in the federal courts. Currently 7 detainees are being actively prosecuted under the military commission process; 5 accused of the 9/11 attacks, 1 charged with the bombing of the *USS Cole*, and 1 charged with actions as a senior al Qaeda commander; and 3 are in the sentencing phase or are serving sentences.

Third, we will continue and expedite the PRB process.

When we have concluded these three lines of effort, it is likely that a limited number of detainees who cannot be prosecuted but who are too dangerous to transfer, even with security assurances, will remain in our custody.

Ultimately, closing the detention center at Guantanamo Bay will require us to consider additional options, including the possibility of transferring some detainees to a secure facility in the United States. The Department of Justice, in consultation with the Secretary of Defense, submitted a report to Congress that concluded that in the event detainees were relocated to the United States, existing statutory safeguards and executive

and congressional authorities provide robust protection of national security. We understand that transfers to the United States are currently barred by statute. As a result, the Government is prohibited from prosecuting any detainees in the United States, even if it represents the best – or only – option for bringing a detainee to justice. The President has consistently opposed these restrictions, which curtail options for reducing the detainee population. We understand the subcommittee has a continuing request for more information. We understand we need to work with Congress on this and I pledge to you we will do so.

Conclusion

President Bush worked towards closing Guantanamo, and many officials in his Administration worked hard towards that objective. We are closer to this goal than many people may realize. Of the nearly 800 detainees to have been held at Guantanamo since the facility opened in 2002, the vast majority have already been transferred, including more than 500 detainees transferred by the previous Administration. The President and the national security experts of this Administration believe it should be closed. The senior military leaders of the country and the leaders of the Department of Defense concur. In my time as Special Envoy, I have seen firsthand the extent to which the detention facility is a source of ongoing friction with our allies and partners and continues to undermine our standing in the world. As indicated in the letter by the retired military leaders, many believe closure of this facility is the single most important counterterrorism effort the United States can undertake. We believe the issue is not whether to close the Guantanamo Bay detention facility; the issue is how to do it.

Thank you and I look forward to your questions in the closed briefing.

